

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katelyn Williams	Team: Team # 3	CCRB Case #: 200904434	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/22/2009 6:00 PM	Location of Incident: Main Street and 41st Avenue	Precinct: 109	18 Mo. SOL 9/22/2010	EO SOL 9/22/2010	
Date/Time CV Reported Sun, 03/22/2009 8:45 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 03/22/2009 8:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Benjamin Cui	01664	932505	109 PCT
2. POM Yatyu Yam	03201	937767	109 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Benjamin Cui	Discourtesy: Sergeant Benjamin Cui acted rudely towards § 87(2)(b)	
B.SGT Benjamin Cui	Abuse: Sergeant Benjamin Cui refused to provide his name to § 87(2)(b)	
C.POM Yatyu Yam	Abuse: Police Officer Yatyu Yam frisked § 87(2)(b)	
D.POM Yatyu Yam	Abuse: Police Officer Yatyu Yam searched § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed a complaint with the CCRB via the Call Processing System on March 22, 2009 (Encl. 3A-B).

At approximately 6:00PM on March 22, 2009, Sgt. Benjamin Cui and PO Yatyu Yam conducted a stop of § 87(2)(b)'s vehicle in the vicinity of Main Street and 41<sup>st</sup> Avenue in Queens and issued him two summonses, one for § 87(2)(b) and the other for § 87(2)(b). The following allegations resulted from the officers' actions:

- **Allegation A- Discourtesy:** Sgt. Benjamin Cui acted rudely toward § 87(2)(b).  
§ 87(2)(g)
- **Allegation B- Abuse of Authority:** Sgt. Benjamin Cui refused to provide his name to § 87(2)(b).  
§ 87(2)(g)
- **Allegation C-Abuse of Authority:** PO Yatyu Yam frisked § 87(2)(b).  
§ 87(2)(g)
- **Allegation D-Abuse of Authority:** PO Yatyu Yam searched § 87(2)(b).  
§ 87(2)(g)

Mediation was not offered to § 87(2)(b) because upon obtaining his formal statement, the case was deemed ineligible.

### Results of Investigation

#### Civilian Statement(s)

##### Complainant/Victim: § 87(2)(b)

§ 87(2)(b) (D.O.B. § 87(2)(b)) is an Asian male with black hair and brown eyes. He is 5'1" tall and weighs 210 pounds, and he is § 87(2)(b).

##### Telephone Statement

§ 87(2)(b) provided a brief telephone statement to the CCRB on March 31, 2009 (Encl. 4A). This statement was consistent with his formal CCRB statement, which is summarized below. No discrepancies were noted.

##### CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 7, 2009 (Encl. 5A-G). He stated that at approximately 6:00PM on March 22, 2009, he was driving in the vicinity of Main Street and 41st Avenue in Queens when he was forced to stop for about twenty seconds because of a bus that had stopped at a bus stop in front of him. § 87(2)(b) was the only occupant of his vehicle.

As § 87(2)(b) attempted to pull his car around the bus, a uniformed officer, identified by the CCRB as Sgt. Benjamin Cui, motioned for him to pull over. § 87(2)(b) complied, and Sgt. Cui approached his window and asked for his driver's license. § 87(2)(b) retrieved his license for Sgt. Cui. Sgt. Cui then demanded § 87(2)(b) insurance card and registration. As § 87(2)(b) went to retrieve these documents, Sgt. Cui leaned his head through § 87(2)(b)'s window and told him to hurry up.

When § 87(2)(b) handed Sgt. Cui his insurance card and registration, Sgt. Cui threw the insurance card at § 87(2)(b)'s stomach with force and yelled at him to remove the cover for him. § 87(2)(b) complied and handed the card back to Sgt. Cui. § 87(2)(b) noted another officer, identified by the CCRB as PO Yam, standing behind Sgt. Cui, but he was not saying anything.

After Sgt. Cui looked at § 87(2)(b)'s documents, he handed back his insurance and registration. § 87(2)(b) asked Sgt. Cui for his name, but, he just ignored this question and walked away with § 87(2)(b)'s license. PO Yam provided § 87(2)(b) with Sgt. Cui's name before walking back to the RMP, but § 87(2)(b) did not recall what it was at the time of his CCRB interview.

After about twenty minutes, PO Yam returned to § 87(2)(b)'s vehicle and handed him a summons for standing in a bus lane. Sgt. Cui remained in the police vehicle. PO Yam pointed to a sign nearby that said "no standing," and told § 87(2)(b) "You cannot stop here at any time." § 87(2)(b) tried to explain to PO Yam that he could not move because he was stuck behind the bus, and in doing so he raised his voice slightly. In response, PO Yam yelled loudly and stated, "Did I talk loud like you?"

PO Yam told § 87(2)(b) to get out of the car. Before § 87(2)(b) could do so, PO Yam reached through § 87(2)(b)'s window and pulled up the lock, unlocking the driver's side door. § 87(2)(b) opened the car door himself and stepped out. § 87(2)(b) then turned around, and PO Yam pressed him, stomach-first, into the side of his car. § 87(2)(b) stated that PO Yam did not do this with force. PO Yam patted § 87(2)(b) down on the outside of his clothes around his torso area and around the inside and outside of his legs. PO Yam then reached inside all of the pockets in § 87(2)(b)'s jeans and removed his keys from his front left pocket. PO Yam pushed down on the inside of § 87(2)(b)'s back pockets with force, causing them to fall slightly on his waist.

Sgt. Cui exited the vehicle and told PO Yam, "Let him go back to the car." § 87(2)(b) then returned to his vehicle and PO Yam took his driver's license back to the police vehicle and returned with another summons for disorderly conduct. § 87(2)(b) asked PO Yam for his name, and PO Yam told him all the information was on the summons.

### **NYPD Statement(s):**

#### **Subject Officer: PO YATYU YAM**

- § 87(2)(b) -old Asian male, 5'7" tall, 155 pounds, black hair and brown eyes.
- On the date of this incident, PO Yam was assigned to the 109th Precinct and was working as Sgt. Benjamin Cui's operator. He worked in-uniform from 3:00PM to 11:35PM.

#### **Memo Book**

PO Yam noted in his memo book (Encl. 7A-C) that at 6:00PM on March 22, 2009, he stopped a vehicle on the corner of 41<sup>st</sup> Avenue and Main Street in Queens and issued the driver, § 87(2)(b) a summons for § 87(2)(b). § 87(2)(b) used a loud voice and refused to comply with PO Yam's orders. PO Yam also issued him a summons for § 87(2)(b).

#### **Summonses**

PO Yam issued § 87(2)(b) two summonses at 6:00PM on March 22, 2009 on the corner of 41<sup>st</sup> Avenue and Main Street in Queens, one for § 87(2)(b) and another for § 87(2)(b) (Encl. 6A).

#### **CCRB Statement**

PO Yaty Yam was interviewed at the CCRB on May 15, 2009 (Encl. 8A-C). He stated that at approximately 6:00PM on March 22, 2009, he was patrolling with Sgt. Cui in the vicinity of 41<sup>st</sup> Avenue and Main Street in Queens. Traffic was backed up in that area because a bus had stopped in the middle lane in order to let passengers on and off. When PO Yam pulled up in front of the bus, he saw that a vehicle was standing in the bus stop preventing the bus from pulling in.

PO Yam proceeded to pull over, and he and Sgt. Cui exited and approached the vehicle. Sgt. Cui asked the driver, later identified as § 87(2)(b) to move his vehicle so that the bus could pull into the bus lane. § 87(2)(b) stated that he was not parked, and was just waiting for someone. PO Yam, who was standing behind Sgt. Cui, told him, “Sir, the sign clearly states, ‘No standing in bus stop anytime.’” § 87(2)(b) responded, “No. I’m not parked here. I can do whatever I want.” Sgt. Cui asked § 87(2)(b) multiple times to produce his driver’s license, but he refused. PO Yam then stepped in and asked § 87(2)(b) for his license, but § 87(2)(b) could not find it.

§ 87(2)(b) eventually found his license, registration and insurance card, but he did not initially hand them to PO Yam. Instead, he asked PO Yam why he was being stopped. PO Yam had to ask for the documents multiple times before § 87(2)(b) complied. Before § 87(2)(b) handed his documents to PO Yam, PO Yam asked him to remove his registration and insurance from their covers, as per procedure. § 87(2)(b) removed them from their covers and handed them to PO Yam. Before returning to the RMP to prepare the summonses, PO Yam told § 87(2)(b) that he was going to issue him two summonses, one for § 87(2)(b), and the other for § 87(2)(b) for refusing to comply with an officer’s orders.

As PO Yam was walking back to his vehicle, § 87(2)(b) exited his vehicle and began walking towards him, yelling loudly in Chinese (Mandarin). PO Yam could not understand what he was saying because he does not understand Mandarin. PO Yam turned back around and walked towards § 87(2)(b) asking him to return to his vehicle. He had to ask him multiple times to go back to his vehicle, but § 87(2)(b) continued to yell angrily at him and stated, “No. I do whatever I want. I can get out of my vehicle. I can go back in.”

PO Yam told § 87(2)(b) that if he didn’t go back to his vehicle, he would do whatever was necessary. § 87(2)(b) then returned to his vehicle and got inside. PO Yam stated that he did not make any physical contact with § 87(2)(b) at any point, nor did Sgt. Cui. Neither officer frisked or searched him, nor did they remove anything from his person. PO Yam did not reach inside § 87(2)(b)’s vehicle to unlock the door.

PO Yam prepared the two summonses, then returned to § 87(2)(b)’s vehicle and handed him the summonses and his documents together. He told § 87(2)(b) to move his vehicle, which he did, and then he returned to the RMP and left the scene. PO Yam was unsure if § 87(2)(b) ever asked Sgt. Cui for his name. PO Yam stated, however, that § 87(2)(b) did not ask him for Sgt. Cui’s name. § 87(2)(b) did ask for PO Yam’s name, and PO Yam told him, “Yes. You can see right here. My name is Officer Yam.” He then pointed to his nameplate on his uniform. He also told § 87(2)(b) that his name would be on the summonses.

#### **Subject Officer: SGT. BENJAMIN CUI**

- § 87(2)(b) -old Asian male, 5’8” tall, 190 pounds, black hair.
- On the date of this incident, Sgt. Cui was assigned to the 109th Precinct and was working as patrol supervisor. He worked in-uniform from 3:00PM to 11:35PM with PO Yatyu Yam.

#### **Memo Book**

Sgt. Cui did not have any relevant entries in his memo book (Encl. 9A-B)

#### **CCRB Statement**

Sgt. Benjamin Cui was interviewed at the CCRB on May 21, 2009 (Encl. 10A-B). He stated that at approximately 6:00PM on March 22, 2009, he and PO Yam were patrolling in the vicinity of Main Street and 41<sup>st</sup> Avenue in Queens when Sgt. Cui noticed a vehicle parked in a bus stop. The driver of the vehicle was identified by the CCRB as § 87(2)(b). § 87(2)(b)’s window was open, so Sgt. Cui told him to move while he was still sitting in the RMP. However, § 87(2)(b) just yelled back at him and did not move. Sgt. Cui did not recall exactly what § 87(2)(b) was yelling.

Sgt. Cui exited the RMP right there, and PO Yam attempted to find a place to park. Sgt. Cui immediately approached the driver’s side window, explained to § 87(2)(b) why he was being

stopped, and asked for his license and registration. § 87(2)(b) started screaming at Sgt. Cui and asking why he was being stopped. Sgt. Cui had to ask for his documentation multiple times before he started to look for it. The surrounding area was very loud due to the traffic, so Sgt. Cui had to lean in towards § 87(2)(b) to be able to hear him.

At first, § 87(2)(b) stated that he could not find his documentation, but he eventually produced his New York State Driver's License. He did not produce his registration or insurance at this time because he could not find it, but Sgt. Cui believes he later handed these documents to PO Yam. Sgt. Cui did not recall throwing § 87(2)(b)'s documentation back at him, and he did not see PO Yam do so.

After parking the RMP, PO Yam approached § 87(2)(b)'s vehicle. He stayed with § 87(2)(b) while Sgt. Cui went back to the RMP to run his license. Sgt. Cui did not see what PO Yam and § 87(2)(b) were doing during this time because he was focused on running the license. After a few minutes, PO Yam returned to the RMP and prepared two summonses, one for parking in a bus stop, and the other for disorderly conduct.

PO Yam returned to § 87(2)(b)'s vehicle for a few moments, just long enough to hand him the summonses and his documentation. PO Yam then returned to the RMP and they left the location. Sgt. Cui stated that § 87(2)(b) did not ask for his name or shield number at any point during the incident. He did not recall § 87(2)(b) ever exiting his car for any reason, nor did he recall if § 87(2)(b) was frisked or searched at any point.

### **NYPD Documents**

#### **SPRINT Report Print-Out**

According to a SPRINT record (Encl. 11A), a patrol supervisor from the 109<sup>th</sup> Precinct informed Central that he had one male stopped on the corner of 41<sup>st</sup> Avenue and Main Street in Queens at 6:18PM. The sergeant's operator reported that the male was issued two summonses.

#### **Summons for Incident and Disposition**

- According to a search of the New York City Department of Finance conducted on November 13, 2009, the parking summons issued to § 87(2)(b) on the date of this incident (summons number § 87(2)(b) is past due. (Encl. 13A)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

#### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of November 13, 2009 with regard to the incident.

#### **Civilian(s) Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

#### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 2A).

#### **Subject Officer(s) CCRB History**

- Sergeant Benjamin Cui has been a member of the NYPD for six years and there are no substantiated CCRB allegations against him (Encl. 1A).
- Police Officer Yatyu Yam has been a member of the NYPD for four years and there are no substantiated CCRB allegations against him. (Encl. 1B).

## Conclusion

### Identification of Subject Officer(s)

- Sgt. Cui acknowledged interacting with § 87(2)(b) on the date of this incident.
- PO Yam acknowledged interacting with § 87(2)(b) on the date of this incident. Furthermore, he acknowledged preparing § 87(2)(b)'s summonses and informing § 87(2)(b) that his name was listed on them.

### Investigative Findings and Recommendations

#### Allegation A- Discourtesy: Sgt. Benjamin Cui acted rudely towards § 87(2)(b)

§ 87(2)(b) alleged that when he handed Sgt. Cui his insurance card, Sgt. Cui threw it back at him with force. Sgt. Cui denied doing so, and PO Yam denied seeing him do so. § 87(2)(g)

#### Allegation B- Abuse of Authority: Sgt. Benjamin Cui refused to provide his name to § 87(2)(b)

§ 87(2)(b) stated that when he asked Sgt. Cui for his name, Sgt. Cui walked away without providing such information. Sgt. Cui stated that § 87(2)(b) did not ask him for his name at any point, and PO Yam did not recall hearing § 87(2)(b) do so. § 87(2)(g)

#### Allegation C-Abuse of Authority: PO Yatyu Yam frisked § 87(2)(b)

#### Allegation D-Abuse of Authority: PO Yatyu Yam searched § 87(2)(b)

§ 87(2)(b) alleged that PO Yam patted him down on the outside of his clothing and then went inside all of his pants pockets. PO Yam denied frisking or searching § 87(2)(b) at any point during this incident. Sgt. Cui did not recall if § 87(2)(b) exited his vehicle at any point, nor did he recall if he was ever frisked or searched. § 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Supervisor: \_\_\_\_\_  
Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_  
Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_  
Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

